

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

**I.(a) PLAINTIFFS**

Mansour Alihosseini

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

Santa Clara

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert B. Jobe, Law Office of Robert B. Jobe  
550 Kearny St., Ste. 200, SF CA 94108, 415-956-5513**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

- |   |   |
|---|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff            | <input type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party)          |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(For diversity cases only)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> Original Proceeding | <input type="checkbox"/> Removed from State Court | <input type="checkbox"/> Remanded from Appellate Court | <input type="checkbox"/> Reinstated or Reopened | <input type="checkbox"/> Transferred from Another district (specify) _____ | <input type="checkbox"/> Multidistrict Litigation | <input type="checkbox"/> Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury Med Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability	<input type="checkbox"/> PERSONAL PROPERTY	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth In Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> LABOR	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> Product Liability	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 893 Environmental Matters
			<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 791 Emp'l.Ret. Inc. Security Act	<input type="checkbox"/> 950 Constitutionality of State Statutes
			<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant)	<input checked="" type="checkbox"/> 890 Other Statutory Actions
			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus:	<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant)	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer w/ disab - Emp'l	<input type="checkbox"/> 555 Prison Condition		
	<input type="checkbox"/> 446 Amer w/ disab - Other			
	<input type="checkbox"/> 480 Consumer Credit			
	<input type="checkbox"/> 490 Cable/Satellite TV			

**VI. CAUSE OF ACTION** (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Mandamus (28 U.S.C. § 1361); Administrative Procedure Act; civil action (28 U.S.C. §§ 1331, 2201 and 2202); 8 C.F.R. § 1209.1

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION      DEMAND \$\_\_\_\_\_  CHECK YES only if demanded in complaint:  
UNDER F.R.C.P. 23      JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S)** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
IF ANY "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**  
(PLACE AND "X" IN ONE BOX ONLY)

 SAN FRANCISCO/OAKLAND SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/8/07

ORIGINAL  
 FILED  
 07 NOV -8 PM 3:23  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

1 Robert B. Jobe (Cal. State Bar #133089)  
 2 LAW OFFICE OF ROBERT B. JOBE  
 3 550 Kearny Street, Ste. 200  
 4 San Francisco, CA 94108  
 Tel: (415) 956-5513  
 Fax: (415) 840-0308  
 Email: bob@jobelaw.com

5 Attorney for Plaintiff.

E-filing

EMC

6  
7 UNITED STATES DISTRICT COURT FOR THE  
8 NORTHERN DISTRICT OF CALIFORNIA

9 CV 07 5692

No.  
Alien No. 76-647-427

10 MANSOUR ALIHOSSEINI,

11 Plaintiff,

12 v.

13  
14 COMPLAINT FOR A WRIT OF  
15 MANDAMUS AND DECLARATORY  
16 AND INJUNCTIVE RELIEF

17 GERARD HEINAUER, DIRECTOR,  
18 USCIS NEBRASKA SERVICE CENTER,  
19 DISTRICT OFFICE; EMILIO T.  
20 GONZALEZ, DIRECTOR, USCIS;  
U.S. CITIZENSHIP AND IMMIGRATION  
SERVICES; MICHAEL CHERTOFF,  
SECRETARY, DEPARTMENT OF  
HOMELAND SECURITY;  
DEPARTMENT OF HOMELAND  
SECURITY; ROBERT S. MUELLER,  
DIRECTOR, FEDERAL BUREAU OF  
INVESTIGATIONS; PETER D.  
KEISLER, ACTING U.S. ATTORNEY  
GENERAL,

21 Defendants.

22 COMPLAINT FOR A WRIT OF MANDAMUS  
AND DECLARATORY AND INJUNCTIVE RELIEF

23  
24 By and through his undersigned attorney, Plaintiff, Mansour Alihosseini ("Mr.  
25 Alihosseini"), as and for his complaint, alleges as follows:

## **PRELIMINARY STATEMENT**

1. Mr. Alihosseini is a native and citizen of Iran who has been granted refugee status in the United States. More than five years ago, Mr. Alihosseini filed an application to register permanent residence or adjust status with the U.S. Citizenship and Immigration Services (“USCIS,” formerly the Immigration and Naturalization Service).<sup>1</sup> Inexplicably, that application remains pending, despite Mr. Alihosseini’s repeated requests for adjudication.

## JURISDICTION

2. Jurisdiction over the subject matter of this civil action is conferred on this Court by 28 U.S.C. § 1331, as a civil action arising under the Constitution, laws, or treaties of the United States; 28 U.S.C. § 1361, as a civil action in the nature of mandamus to compel an officer or employee of the United States to perform a duty owed to Plaintiff; 5 U.S.C. § 702, as a challenge to agency action under the Administrative Procedure Act (“APA”); and 28 U.S.C. §§ 2201 and 2202, as a civil action seeking, in addition to other remedies, a declaratory judgment.

## VENUE

3. Venue is properly in this district pursuant to 28 U.S.C. §§ 1391(e)(2) and (e)(3), because a substantial part of the events giving rise to this claim occurred in this district, Mr. Alihosseini resides in this district, and no real property is involved in this action.

## INTRA-DISTRICT ASSIGNMENT

4. Because a substantial portion of the events that gave rise to this lawsuit occurred in the County of San Francisco, this case should be assigned to the Court's San Francisco division.

## **STANDING**

5. The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Defendants’ illegal action has immeasurably

<sup>1</sup> Pursuant to the *Department of Homeland Security Reorganization Plan, Homeland Security Act of 2002*, Pub. L. No. 107-296, 116 Stat. 2135 (2002), 6 U.S.C. §§ 101-557, as of March 1, 2003, the INS was abolished and its functions were transferred to the U.S. Citizenship and Immigration Services (“USCIS”) within the Department of Homeland Security (“DHS”).

delayed the adjudication of Plaintiff's application. Plaintiff thus falls within the APA's standing provisions. See, *Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State, Bureau of Consular Affairs*, 45 F.3d 469, 471-72 (D.C. Cir. 1995), *reh'g denied*, 74 F.3d 1308 (D.C. Cir.), vacated on other grounds, 117 S. Ct. 378 (1996); see also, *Abourezk v. Reagan*, 785 F.2d 1043, 1050-51 (D.C. Cir. 1986).

**PLAINTIFF**

6. Mansour Alihosseini is a native and citizen of Iran who currently resides at 3128 Neal Ave. #3, San Jose, CA 95117. Mr. Alihosseini was admitted into the United States as a refugee on August 16, 2000. On or about September 30, 2002, he filed an application to adjust his status to that of a lawful permanent resident (Form I-485) with the USCIS Nebraska Service Center (“NSC”).<sup>2</sup> Although more than five years have lapsed since that time, the USCIS has failed to adjudicate that application.

## DEFENDANTS

7. Defendant, Gerard Heinauer, is the Director of the USCIS Nebraska Service Center and is sued in his official capacity.

8. Emilio T. Gonzalez is the Director of the USCIS and, as such, has been delegated the authority to direct the administration of the USCIS, and to enforce the INA and all other laws relating to the immigration and naturalization of non-citizens. Defendant Gonzalez is sued herein in his official capacity.

9. The United States Citizenship and Immigration Services is the federal agency within the Department of Homeland Security (“DHS”) that is responsible for the administration and enforcement of the Immigration and Nationality Act (“INA”) and all other laws relating to the immigration and naturalization of non-citizens.

10. Michael Chertoff is the Secretary of the Department of Homeland Security, the executive department which contains the USCIS, and is sued herein in his official capacity. Defendant Chertoff is charged with the administration and enforcement of the Immigration and

<sup>2</sup> Receipt number LIN-03-007-52925.

1      Nationality Act pursuant to INA § 103(a), 8 U.S.C. § 1103(a).

2      11.     The Department of Homeland Security is the federal agency encompassing the  
3      USCIS, which is responsible for the administration and enforcement of the INA and all other  
4      laws relating to the immigration and naturalization of non-citizens.

5      12.     Robert S. Mueller is the director of the Federal Bureau of Investigation (“FBI”)  
6      and is sued herein in his official capacity. Defendant Mueller is charged with conducting  
7      background checks, including the National Name Check Program, in response to requests  
8      submitted by federal agencies, including the USCIS.

9      13.     Peter D. Keisler is sued in his official capacity as the Acting U.S. Attorney  
10     General. In that capacity, he is charged with supervising and directing the administration and  
11     operation of the Department of Justice, including the FBI.

#### FACTS

12     14.     Lawful permanent resident status confers many advantages over refugee status.  
13     Lawful permanent residents have the privilege of residing and working permanently in the United  
14     States, INA § 101(a)(20), 8 U.S.C. § 1101(a)(20), they may travel outside the United States  
15     freely and generally are readmitted to the United States automatically, INA § 101(a)(13)(C), 8  
16     U.S.C. § 1101(a)(13)(C), and they may petition to immigrate close family members, INA §§ 201  
17     and 203, 8 U.S.C. §§ 1151 and 1153.

18     15.     After five years of status as a lawful permanent resident, an individual may apply  
19     to naturalize his status to that of a U.S. citizen. INA § 316(a), 8 U.S.C. § 1427(a). Because  
20     lawful permanent resident status is a prerequisite for naturalization, any delay in adjusting to  
21     lawful permanent resident status also delays eventual naturalization.

22     16.     Before adjudicating an application for adjustment of status pursuant to INA §  
23     209(a), 8 U.S.C. § 1159(a), however, USCIS conducts “numerous” criminal and national security  
24     background checks, including (a) a fingerprint check by the FBI; (b) a **name check** by the FBI;  
25     and (c) a check against the records of the Department’s Interagency Border Inspection System.  
26     See *Liu v. Chertoff*, No. 06-3297, 2007 WL 1202961, at \* 1-2 (C.D. Ill. April 23, 2007). Ninety-  
27     nine percent of the FBI name checks are completed in six months. See *USCIS Interoffice*

1      Memorandum from Michael Aytes, Acting Associate Director, Domestic Operation, April 25,  
 2      2006, reprinted No. 21 *Interpreter Releases* 988 (May 22, 2006). In Mr. Alihosseini's case,  
 3      however, the name check process has taken more than five years and has still not been  
 4      completed.

5      17. This lawsuit arises out of Defendants' illegal delay in the adjudication of Mr.  
 6      Alihosseini's application for status as a lawful permanent resident (Form I-485).

7      18. Mr. Alihosseini was born on September 1, 1968 in Karadj, Iran. Mr. Alihosseini  
 8      was admitted into the United States as a refugee on August 16, 2000. On September 30, 2002,  
 9      Mr. Alihosseini filed Form I-485 (Application to Register Permanent Residence or Adjust Status)  
 10     with the USCIS Nebraska Service Center, in accordance with INA § 209, 8 U.S.C. § 1159, and 8  
 11     C.F.R. § 1209.1(a). Despite numerous inquiries, Mr. Alihosseini's application has been pending  
 12     with the USCIS since that time.

13     19. On April 22, 2004 and August 12, 2005, Mr. Alihosseini provided his fingerprints  
 14     to the USCIS in connection with his pending application for adjustment of status.

15     20. The FBI's willful delay in completing Mr. Alihosseini's background checks and  
 16     USCIS's willful delay in adjudicating Mr. Alihosseini's I-485 application clearly contravenes the  
 17     FBI's and USCIS's duty to act upon matters presented to them within a reasonable period of  
 18     time. *See* 5 U.S.C. § 555(b) ("With due regard for the convenience and necessity of the parties or  
 19     their representatives and within a reasonable time, each agency shall proceed to conclude a  
 20     matter presented to it."); *Tang v. Chertoff*, 493 F.Supp. 2d 148, 156 (D. Mass June 26, 2007)  
 21     (finding a 4 year delay unreasonable), *citing Paunescu v. INS*, 76 F.Supp. 2d 896, 902 (N.D.Ill.  
 22     1999) (2 year delay unreasonable); *Yu v. Brown*, 36 F.Supp. 2d 922, 935 (D.N.M. 1999) (2.5 year  
 23     delay unreasonable); *Agbemape v. INS*; 1998 WL 292441 \*7 (N.D.Ill. 1998) (20 month delay  
 24     unreasonable); *Hu v. Reno*, 2000 U.S. Dist. Lexis 5030, at \*14 (N.D.Tex. Apr. 19, 2000) (2.5  
 25     year delay unreasonable); *Salehian v. Novak*, 2006 U.S. Dist. LEXIS 77028 at \*4 (D.Conn.Oct.  
 26     23, 2006) (2 year delay unreasonable).

27     21. Accordingly, this civil action seeks a writ of mandamus ordering the FBI to  
 28     promptly complete Mr. Alihosseini's background checks and USCIS to promptly adjudicate Mr.

1 Alihosseini's adjustment application.

2 22. Mr. Alihosseini has exhausted any administrative remedies that may exist.

3 Although more than five years have lapsed since Mr. Alihosseini filed his application for  
 4 adjustment of status, and he is well outside the processing times of the NSC, the USCIS has still  
 5 not adjudicated his application.<sup>3</sup> No other remedy exists for Mr. Alihosseini to resolve  
 6 Defendants' refusal to comply with their regulatory obligations within a reasonable period of  
 7 time.

8 23. Mr. Alihosseini has suffered, and will continue to suffer, irreparable injury for  
 9 which he has have no adequate remedy at law. If the relief prayed for is not granted, Mr.  
 10 Alihosseini will suffer continued extreme individual hardship.

11 **FIRST CAUSE OF ACTION**  
 (Mandamus)

12 24. Plaintiff repeats, alleges, and incorporates paragraphs 1 through 23 above as  
 13 though fully set forth herein.

14 25. Mr. Alihosseini's application for adjustment of status is delayed due to Defendant  
 15 Mueller's failure to timely perform criminal background checks and/or the other Defendants'  
 16 failure to act on that application. Defendants have the nondiscretionary duty to adjudicate the  
 17 I-485 application filed by Plaintiff. By failing to do so, Defendants are, quite simply, failing to  
 18 comply with their statutory and regulatory duties. Mr. Alihosseini is entitled, therefore, to relief  
 19 in the nature of mandamus pursuant to 28 U.S.C. § 1361 to compel Defendant Mueller to  
 20 complete all necessary background checks and provide the results of those background checks to  
 21 the remaining Defendants to promptly adjudicate his I-485 application.

22 **SECOND CAUSE OF ACTION**  
 (Violation of the Administrative Procedure Act)

23 26. Plaintiff repeats, alleges, and incorporates paragraphs 1 through 25 above as  
 24 though fully set forth herein.

---

25  
 26 <sup>3</sup> See <https://egov.uscis.gov/cris/jsp/Processtimes.jsp?ServiceCenter=NSC> (Nebraska Service  
 27 Center is processing applications for adjustment of status filed on or before November 9, 2006).

1        27. The APA *requires* administrative agencies to act upon matters presented to them  
 2 “within a reasonable time,” 5 U.S.C. § 555(b), and provides that federal courts “shall . . . compel  
 3 agency action unlawfully withheld or unreasonably delayed . . .”<sup>4</sup> 5 U.S.C. § 706(1) (emphasis  
 4 added). By using the word “shall,” Congress imposed a mandatory duty on this Court to compel  
 5 agency action that has been “unreasonably delayed.” *Forest Guardians v. Babbitt*, 164 F.3d  
 6 1261, 1269 (10th Cir. 1998)(“Through § 706 Congress has stated unequivocally that courts *must*  
 7 compel agency action unlawfully withheld or unreasonably delayed.”)(emphasis added). *See also*  
 8 *Pierce v. Underwood*, 487 U.S. 552, 569-570 (1988)(Congress’ use of “shall” constitutes  
 9 mandatory language); *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 739 n.15  
 10 (1981)(same).

11        28. Plaintiff is a person aggrieved by agency action under the Administrative  
 12 Procedure Act, 5 U.S.C. §§ 701 *et seq.* By failing to complete and provide the results of the  
 13 criminal background checks to USCIS, Defendant Mueller has “unlawfully withheld or  
 14 unreasonably delayed” agency action in violation of 5 U.S.C. § 706(1). In the alternative, if the  
 15 background checks have been completed, the remaining Defendants have unlawfully delayed  
 16 final adjudication of Mr. Alihosseini’s application for adjustment of status.

17        29. Accordingly, this Court should compel Defendant Mueller to complete and release

18        4        “Courts have given little attention to the distinction between agency action ‘unlawfully  
 19 withheld’ and agency action “reasonably delayed.” *Forest Guardians v. Babbitt*, 164 F.3d 1261,  
 20 1270 (10th Cir. 1998). “In the absence of any clear statutory guidance,” however, the Tenth Circuit  
 21 decided to “simply apply the most straight forward common sense reading of these two phrases,”  
 saying:

22        [I]f an agency has no concrete deadline establishing a date by which it must act, and instead  
 23 is governed only by general timing provisions – such as the APA’s general admonition that  
 24 agencies conclude matters presented to them “within a reasonable time,” *see* 5 U.S.C. §  
 25 555(b) – a court must compel only action that is delayed unreasonably. Conversely, when  
 26 an entity governed by the APA fails to comply with a statutorily imposed absolute deadline,  
 27 it has unlawfully withheld agency action and courts, upon proper application, must compel  
 the agency to act.

28        *Id.* at 1271-72.

1 the results of Mr. Alihosseini's criminal background checks to the remaining Defendants, so that  
2 his application for adjustment of status may be immediately adjudicated. On the other hand, if  
3 Defendant Mueller has completed the background checks, the Court should compel the other  
4 Defendants to immediately adjudicate Mr. Alihosseini's application for adjustment of status. By  
5 failing to adjudicate the I-485 application filed by Plaintiff, Defendants have acted arbitrarily and  
6 capriciously and have "unlawfully withheld or unreasonably delayed" agency action in violation  
7 of 5 U.S.C. § 706.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays that this Court:

- (1) Accept jurisdiction over this action;
  - (2) Compel the completion and immediate release of Mr. Alihosseini's criminal bond check results;
  - (3) Declare Defendants' failure to adjudicate the I-485 application filed by Mr. Alihosseini to be a violation of 8 C.F.R. § 1209.1, the Administrative Procedure Act, and 28 U.S.C. § 1331;
  - (4) Order the USCIS to immediately adjudicate Mr. Alihosseini's I-485 application;
  - (5) Grant attorney's fees and costs of court under 28 U.S.C. § 2412, 28 U.S.C. § 1331, Fed. R. Civ. P. 54(d), and other authority; and
  - (6) Grant such other and further relief as this Court deems just and proper under the circumstances.

DATED: November 8, 2007

Respectfully Submitted,

Robert B. Jobe  
LAW OFFICE OF ROBERT B. JOBE  
550 Kearny St., Ste. 200  
San Francisco, CA 94108  
(415) 956-5513  
(415) 840-0308

Attorney for Plaintiff